<u>REMARKS</u>

In response to the Office Action mailed on 01/23/2006, Applicant wishes to enter the following remarks for the Examiner's consideration. Claims 1-29 and 31-40 are pending in the application.

Rejection of claims under 35 USC §102(e)

Claims 1-4, 7-9, 14-29, 31-33 and 36-40 have been rejected under 35 USC §102(e) as being anticipated by U.S. Patent No. 6,907,557 to Perez et al. (incorporating U.S. Patent No. US 6,401,220 to Grey). Applicant respectfully traverses this rejection of the claims.

With regard to claims 1 and 21, the examiner has opined that the test executive software of Grey column 11, lines 41-56 and column 12 lines 6-15 is equivalent to a computer program of claim 1. However, Grey column 2, lines 11-13 describes the test executive as 'a module or set of modules that provide an API for creating, editing, executing and debugging sequences'. See also column 1, lines 35-48. In the Grey reference it is the Test Sequence (defined in an associated Sequence File) that controls the series of steps in a test (see column 1, lines 62-64, column 2, lines 1-2, and column 4, lines 47-48, for example). In particular, column 1, lines 62-64 defines the sequences as 'a series of steps that the <u>user</u> specifies for execution in a particular order' (emphasis added). Thus it is the test sequence that controls the measurement process.

In the response to arguments, the examiner maintains that the variation point is a point in a test sequence <u>execution</u>. This suggests that the variation point is a point in time. However, in claims 1 and 21 a variation point is

defined as a point in a computer program at which call instruction is inserted. This defines the variation point is a location in a computer program, not a point in time. Further, the call instruction is inserted by the designer, before execution, rather than during execution. In Grey (and Perez), the test sequence is the computer program that controls the measurement process, and the test sequence is created by the user. The test executive is part of the architecture through which the test sequence exerts its control.

In claims 1 and 21, the user is prevented from modifying the measurement process other than through the user-defined variation process. Grey teaches away from this aspect of the claims, since in the Grey reference it is the user who defines the measurement process through the test sequence. In particular, Grey describes the test executive as having a Sequence Editor specifically to allow the user to modify the test sequence (and thereby modify the measurement process). Rather than preventing the user from modifying the measurement process other than through user defined variation points, the test executive of Grey provides a sequence editor specifically to allow the user to modify the measurement process without restriction.

The examiner relies on Perez column 4, lines 52-65 to argue that the user is prevented from modifying the measurement process other than through the user-defined variation function. Perez column 4, lines 52-65 describes child test sequences derived from a base test sequence. However, Perez column 3, lines 16-25 describes how the base test sequence is manually created by the user. It is clear that the user is not prevented from modifying the base sequence. Further, column 3, lines 38-51, describes how

the user can manually edit the child test sequences. It is clear that the user is not prevented from modifying the child test sequence. Applicant submits Perez teaches away from the inventions of claim 1 and claim 21, since it teaches that the computer program that controls the measurement process (i.e. the test sequence or child test sequence) may be manually edited by the user.

Further, claims 1 and 21 call for the computer program that controls the measurement process to contain variation points inserted by a designer (not the user). The examiner refers to Grey et al. column 12, lines 41-53. Here Grey describes how sequences contain steps that can call external code modules. As discussed above, the sequences are specified by the user, not by the designer (as called for in claims 1 and 21), so any calls to external code modules are inserted by the user. Further, this is contrary to other remarks by the examiner that identified the test executive as being equivalent to the computer program of claims 1 and 21.

The Perez and Grey references describe a test executive system of the type described on page 2, line 16, to page 3, line 9, of the specification for the present invention. In particular, the references describe systems in which the user is free to create a complete test procedure through definition of the sequence of steps. The present invention provides for a user to *modify* a process without requiring the user to understand the complete process. The process itself is determined by the designer of the program. The user may make variations to the process without the risk of invalidating the process itself. In contrast, in the systems of Perez and Grey, there are no constraints to prevent a user from defining an invalid process.

Claims 2-4, 7-9 and 14-19 depend from claim 1 and claims 22-29, 31-33 and 36-40 depend from claim 21. Although additional arguments could be made for the patentability of each of the claims, such arguments are believed unnecessary in view of the above discussion. The undersigned wishes to make it clear that not making such arguments at this time should not be construed as a concession or admission to any statement in the Office Action.

In light of the foregoing amendment and remarks, Applicant respectfully submits that the Perez reference, which incorporates the Grey reference, does not teach, suggest, disclose or otherwise anticipate the recitations of claims 1-4, 7-9, 14-29, 31-33 and 36-40. Applicant thus respectfully requests that this basis of rejection of the claims be withdrawn and that a Notice of Allowance for these claims be mailed at the Examiner's earliest convenience.

Rejection of claims under 35 USC §103(a)

Claims 5, 6, 10-13, 34 and 35 have been rejected under 35 USC §103(a) as being unpatentable over Perez in view of U.S. Patent Application Publication No. 2002/0026514 to Ellis at al. Applicant respectfully traverses this rejection of the claims.

The Ellis reference discloses a method for facilitating inter-process communication across different platforms and software environments using a multiplicity of object-oriented inter-process communication protocols to the manufacturing equipment. Process control and monitoring is mediated through a set of software methods that may be invoked to implement or monitor processes. The method is concerned with providing communications across different platforms to facilitate centralized control and monitoring. The

Ellis reference is concerned with starting and stopping software methods, whereas the present invention is concerned with causing variations to methods. The Simple Object Access Protocol and Common Object Request Broker Architecture, referred to in claims 5 and 6 and claims 34 and 35, were designed specifically for providing communications between software objects or components. However, claims 5 and 6 depend from claim 1 and claims 34 and 35 depend from claim 21. Claims 1 and 21 call for the computer program to contain a variation point at which a function call instruction is inserted by a designer of the computer program to pass control to a user-defined variation function. Further, the user is prevented from modifying the measurement process other than through the user-defined variation function. As described above, this feature is not taught by Perez, nor is it taught by Ellis. Thus even if one were to combine the Perez reference with the Ellis reference, the result would not be the claimed invention of claims 1 and 21 or their dependent claims 5, 6, 34 and 35.
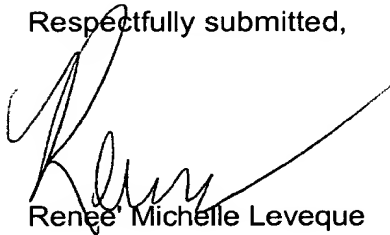
In light of the foregoing remarks, Applicant respectfully submits that the Perez and Ellis references, whether considered alone or in combination fail to teach, disclose, suggest or otherwise render obvious the recitations of claims 5, 6, 34 and 35. Applicant thus respectfully requests that this basis of rejection of the claim be withdrawn and that a Notice of Allowance for claims 5, 6, 34 and 35 be mailed at the Examiner's earliest convenience.

In light of the foregoing amendments and remarks, applicant submits that all rejections of the pending claims have been overcome. Allowance of claims 1-29 and 31-40 is therefore respectfully requested at the Examiner's earliest

convenience. Although additional arguments could be made for the patentability of each of the claims, such arguments are believed unnecessary in view of the above discussion. The undersigned wishes to make it clear that not making such arguments at this time should not be construed as a concession or admission to any statement in the Office Action.

The examiner is cordially invited to contact the undersigned if there are any questions regarding this application.

Respectfully submitted,

Renee' Michelle Leveque

Leveque Intellectual Property Law, P.C.
Reg. No. 36,193
221 East Church Street
Frederick, Maryland 21701
301-668-3073
Attorney for Applicant(s)